

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

SHAIRIQ SEABROOKS]
Plaintiff,]
]]
v.] No. 1:11-0078
] Judge Trauger
C.C.A. - MEDICAL DEPARTMENT,]
et al.]
Defendants.]

O R D E R

On January 6, 2012, the Clerk issued an Entry of Default against the defendant, Herbert Layas.¹ Pursuant to the Entry of Default, the plaintiff has filed a Request for Specific Relief (Docket Entry No.50) from this defendant.

The Magistrate Judge has issued a Report and Recommendation (Docket Entry No.69) addressing the plaintiff's Request for Specific Relief, to which the plaintiff has filed an Objection (Docket Entry No.74).

The Court is now obliged to conduct a *de novo* review of these pleadings. 28 U.S.C. § 636(b)(1).

In the Report and Recommendation, the Magistrate Judge urges the Court to set aside the Entry of Default against the defendant,

¹ The Entry of Default is memorialized as Docket Entry No.42 in the case of Shairiq Seabrooks v. Herbert Layas, et al., No.1:11-0079 (M.D. Tenn.). That case was consolidated with the instant action on January 6, 2012. Docket Entry No.40.

Herbert Layas, and deny the plaintiff's Request for Specific Relief. This recommendation is based upon the Magistrate Judge's finding that Herbert Layas has not yet been properly served with process. The Court agrees with the Magistrate Judge's conclusions, but for a different reason.

Here, it is not necessary to determine whether the defendant has, as yet, been properly served with process. This action is being brought pursuant to 42 U.S.C. § 1983. See Docket Entry No.1. To state a claim for § 1983 relief, the plaintiff must plead and prove that the defendant, while acting under color of state law, deprived him of some right guaranteed by the Constitution or laws of the United States. Parratt v. Taylor, 451 U.S. 527, 535 (1981).

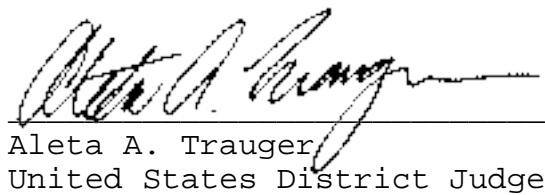
The defendant, Herbert Layas, is an inmate at the South Central Correctional Center. The plaintiff alleges that, on April 28, 2011, Layas stabbed him six times with a metal shank. Shairiq Seabrooks v. Herbert Layas, et al., No.1:11-0079; Docket Entry No.1 at pg.4. As a prisoner, Layas was not acting under color of state law when he allegedly stabbed the plaintiff. Therefore, the plaintiff has failed to state a substantive claim for § 1983 relief from this defendant.

Accordingly, the claims against the defendant, Herbert Layas, are DISMISSED. 28 U.S.C. § 1915(e)(2)(the Court may dismiss a frivolous claim made by a prisoner acting in forma pauperis *sua sponte at any time*). The Entry of Default is set aside for good cause, Rule 55(c), Fed.R.Civ.P., and the plaintiff's Request for

Specific Relief is DENIED.

For the reasons stated above, the Report and Recommendation is ADOPTED and APPROVED as MODIFIED. The plaintiff's Objection is OVERRULED.

It is so ORDERED.



Aleta A. Trauger
United States District Judge